



Winston H. Hickox
Secretary for
Environmental
Protection

State Water Resources Control Board

Division of Water Rights

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Gray Davis
Governor

NOTICE OF APPLICATION TO APPROPRIATE WATER BY PERMIT

APPLICATION: 31413

DATE FILED: April 15, 2003

Notice is hereby given that Hypower, Inc., has filed an application for a water right permit to divert water from Butte Creek tributary to the Sacramento River in Butte County. The State Water Resources Control Board (SWRCB) will determine whether a water right permit should be issued for the application and, if so, whether conditions are needed in the permit to protect the environment, the public interest, and downstream water users. This notice provides a description of the proposed project and also describes the procedure and time frame for submittal of protests against the application. This notice may be viewed at the Division of Water Rights' (Division) website at www.waterrights.ca.gov. Any correspondence directed to the applicant should be mailed to:

Hypower, Inc.
c/o Philip M. Hoover
H&M Engineering, Inc.
4521 Alpine Rose Bend
Ellicott City, MD 21042

Please note: The SWRCB does not have jurisdiction to prepare an environmental document subject to the California Environmental Quality Act (CEQA), or make determinations regarding the conditions for water use under the subject application since the proposed hydroelectric power project is subject to regulation by the Federal Energy Regulatory Commission (FERC).

Description of Project

Hypower, Inc., has applied for water rights to divert 25 cubic feet per second (cfs) of water for nonconsumptive use from Butte Creek for hydroelectric power generation at its Forks of Butte Hydroelectric Project. Hypower, Inc., currently holds water right Permit 20227 (Application 27815) to divert up to 250 cfs as part of the Forks of Butte Hydroelectric Project, which is operated under FERC License No. 6896 and generates up to 13,300 kilowatts of power. Hypower, Inc., is applying for the additional 25 cfs of water in order to maximize the output of the powerhouse facilities. Hypower, Inc., has filed for and received an amendment to their current FERC License No. 6896 to authorize the additional generating capacity for its powerhouse.

"The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at <http://www.swrcb.ca.gov>"

The water diverted from Butte Creek is directed into an approximately 560 foot deep, eight-foot diameter, vertical drop shaft that feeds the water into an approximately 12,000 foot-long, 10'-8" diameter tunnel that passes under Butte Creek to the east side of the creek. Water from the tunnel then enters a 1250 foot long steel penstock that delivers the water to the powerhouse. Return water from the powerhouse is discharged into a concrete tailrace channel and then back into Butte Creek. The point of discharge back into Butte Creek is approximately 2.8 miles downstream of the original point of diversion.

The 25 cfs of water proposed to be diverted under this application will generate up to an additional 1,200 kilowatts of power at the Forks of Butte Hydroelectric Project. The project operates run of the river at a total fall of 734 feet.

Summary of Application

County: Butte
Source: Butte Creek tributary to the Sacramento River
Point of
Diversion: Located within the SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 27, T24N, R3E, MDB&M.
Amount: 25 cfs of direct diversion.
Season: January 1 through December 31
Purpose: Hydropower generation
Place of Use: Located within the NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 10, T23N, R3E, MDB&M

Environmental Information

The SWRCB does not have jurisdiction to prepare an environmental document subject to CEQA since the proposed hydroelectric power project is subject to regulation by FERC.

PROTEST SUBMITTAL INFORMATION

Protest Requirements

A person may file a protest based on any of the following factors:

- Interference with prior water rights.
- Adverse environmental impact.
- Not in the public interest.
- Contrary to law.
- Not within the jurisdiction of the SWRCB.

All protests must clearly describe the objections to approval of the application and the factual

basis for those objections. There must be a clear link between the proposed project and the objection to its approval. If the objection is based on interference with prior water rights, the protest must describe specifically what injury would result if the application is approved. In addition, the party claiming interference with prior rights must provide specific information describing the basis of the prior right, the date the use began, the quantity of water used, the purpose of use and the place of use. Please note that any water right permit issued by the SWRCB is subject to vested water rights and will include conditions to protect such rights.

If the protest is based on an allegation that the proposed appropriation would not be within the SWRCB's jurisdiction, would not best conserve the public interest or public trust uses, would have an adverse environmental impact, or would be contrary to law, the protest must be accompanied by a statement of facts supporting the allegation.

For example, public interest protests should clearly indicate how the appropriation will affect the public; environmental protests should identify specific impacts and provide supporting recitals on the effect of the proposed project on plants, animals, fish, erosion, pollution, aesthetics, etc.; public trust protests must identify the navigable waters and public trust values that would be affected by the proposed project and how the project will impact public trust values.

All protests should include a description of any measures that could be taken to resolve the protest. The protest also must indicate the manner in which the protestant served upon the applicant a duplicate copy of the protest.

If sufficient information is not submitted, the SWRCB may reject the protest or request that the protestant submit additional information. Protests of a general nature (not project specific) or protests that are inconsistent with constitutional or legislated state policy will not be accepted. A request for information or a request that studies be conducted does not constitute a protest.

Procedure for Submitting Protests

Protests should be submitted on standard protest forms available from the Division of Water Rights' website at www.waterrights.ca.gov/forms/ or upon request from the Division of Water Rights. A pamphlet that provides additional information relating to water rights and the procedure for filing protests is also available on the website or by mail. Any requests or the submittal of the completed protest form should be directed to the engineer listed as the contact person at the end of this notice. **A copy of the completed protest form must also be mailed to the applicant.**

Protest Submittal Deadline

Protests submitted in response to this notice must be received by the Division by 3:00 p.m. on the **60th** day after the date of this notice (the close of the protest period). Protests may be submitted by any of the following methods:

1. Mailed to Division of Water Rights; P. O. Box 2000; Sacramento, CA 95812-2000
2. Faxed to the Division at (916) 341-5400
3. E-mailed to the engineer listed below under the heading “Contact Person”
4. Hand-delivered to the Division office located at 1001 “I” Street, 14th Floor, Sacramento, CA

If you choose to fax or e-mail the protest due to the constraints of the noticing period, the fax or e-mail must be followed by timely delivery of an original signed copy, either personally or by mail, to the Division of Water Rights in order for the protest to be accepted. The SWRCB will respond to all protests within 60 days of the final day to file a protest. **Protests not submitted by the close of the protest period will be subject to rejection.**

For good cause, the SWRCB may grant an extension of time to file a protest. It is the protestant's responsibility to contact the engineer listed below as “Contact Person” to request the extension prior to the end of the protest period.

Resolution of Protests

The applicant will have 30 days to respond to a protest once it is accepted by the Division of Water Rights. The protestant and the applicant are expected to make a good faith effort to resolve the protest within 180 days from the close of the protest period.

This is a “major” project (the proposed diversion is greater than 3 cubic feet per second by direct diversion or greater than 200 acre-feet per year by storage) as defined by section 1348 of the Water Code. Therefore, any protest issues not resolved by the applicant or by provisions of section 1335 of the Water Code will be decided by the State Water Resources Control Board following an evidentiary hearing.

CONTACT PERSON

To obtain additional information regarding this project, or to obtain copies of protest forms, or general information pamphlets, please contact Kathryn Gaffney by phone at (916) 341-5360 or by electronic mail at kgaffney@waterrights.swrcb.ca.gov. Information and protest forms are also available at the Division’s website: www.waterrights.ca.gov/forms/.

Date of Notice: **July 25, 2003**